THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE D. APPA RAO

WRIT APPEAL No. 1193 of 2002

Date: 22-08-2006

Between:

The Registrar,
Archarya N.G.Ranga Agricultural University,
Rajendranagar, Hyderabad & another.

… Appellants

AND

S.M.A. Naqui

… Respondent

THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE D. APPA RAO

WRIT APPEAL No. 1193 of 2002

ORDER:- (Per BPR,J)

The appellants filed this appeal under Clause 15 of the Letters Patent, aggrieved by the orders dated 08.02.2002, passed in WP.No.25874 of 1996, by a learned Single Judge, allowing the writ petition at the instance of the respondent herein.

Heard Sri B. Shiva Reddy, learned Standing Counsel, appearing for appellants and Sri G. Gopal Rao, learned counsel appearing for the respondent.

Few facts, which are necessary, for disposal of this appeal are that the respondent herein, who has been employed with the appellants, was initially appointed as Senior Assistant on 24.10.1996 in the Administrative Office of A.P. Agricultural University, Rajendranagar, Hyderabad, on regular basis. Since he was fully qualified and passed all the tests, he was accordingly promoted as Office Superintendent at the Administrative office with effect from 25.04.1994. According to the respondent, he is entitled to the next promotion i.e., Office Superintendent with a common category of Assistant Registrar/Assistant Comptroller/ Administrative Officer/PA to Vice Chancellor, which are governed by the A.P. Agricultural University (Administration and Accounts Officer) Service Regulations 1981.

The case of the respondent herein was that he became fully qualified for such promotion as long back as in the year 1999 itself. He was promoted as Administrative Accounts Officer on 13.02.1995 and posted at Naira in Sirkakulam district. The said order subsequently contemplates that the said promotee should join on or before 20.02.1995, failing which his promotion would be cancelled. However, according to the respondent, having regard to the fact that he has taken care of the family affairs since his wife was sick, he submitted a representation on 28.02.1995 and requested to post him in the vacancy at Hyderabad or otherwise to consider for future vacancies. Therefore, according to him, he should have been posted at Hyderabad and even otherwise, the said promotion is given a gobye, as per the Regulation No.5 of the aforesaid regulations, he would be entitled to be considered whenever a subsequent vacancy arises. Therefore, he sought for such promotion in the aforesaid representation. In spite of the same, instead of considering his case as per the aforesaid regulation, the appellant rejected his request, as per proceedings dated 24.03.1995, which is illegal.

Though he filed an appeal before the first appellant, the same has not been considered. According to him, he is the senior most among the Superintendents in the University and several of his juniors have also been promoted as per proceedings dated 02.09.1996 and therefore, the entire action is totally unsustainable. There are also others who were taken into consideration by giving promotion without giving similar such benefit to the respondent. It is further pointed out that this Court had already held in WA.No.973 of 1996 dated 21.08.1996 that in similar circumstances, second consideration is permissible. Hence, the writ petition was filed.

Contesting the case of the respondent, the appellants filed a detailed counter-affidavit denying the entire allegations and also his entitlement, as such, especially having regard to the fact of declining to accept the promotion when it was given. In regard to others, they have explained that they did not stand any way nearer to the respondent. Further, it is also pointed out that Regulation No.5, which has been sought by the respondent, is not applicable since he is not holding the post of Assistant Registrar/ Assistant Comptroller/ Administrative Officer/PA to Vice Chancellor as on 05.10.1981 i.e., the date of issuance of the Regulations, however, the respondent himself is responsible for the situation for having rejected the promotion. Thus, there are no merits in his claim.

On considering the relative merits, the learned Single Judge allowed the writ petition squarely basing upon its findings on the conclusion arrived at by a Division Bench of this Court in WA.No.973 of 1996. Hence, this Appeal.

Sri B. Siva Reddy, learned Standing Counsel appearing on behalf of the appellants strenuously contended that neither the said decision in WA.No.973 of 1996 is applicable to the facts of the case nor is there any justification for the claim of the respondent, as he himself was responsible for the situation for voluntarily not accepting the promotion. Further, it is also his case that having regard to the long delay, this Court ought not to have exercised its power under Article 226 of the Constitution of India.

Sri Gopal Rao, learned counsel appearing for the respondent sought to suspend the findings of the learned Single Judge to the effect that the case is squarely covered by the earlier decision, even otherwise, the regulation steps in aid of the respondent and therefore,

there is absolutely no illegality and the learned Single Judge has rightly exercised his discretion in his favour and does not warrant any interference.

Having considered the submissions and also on a perusal of the material, the only question which arises for consideration in this appeal is as to whether on the facts and circumstances, the respondent/writ petitioner would be entitled to the relief of promotion at the relevant point of time, as per the Regulation No.5 of the aforesaid regulations.

There is no dispute to the chequered events, which ultimately led to filing of the writ petition for considering his case on the second occasion when the vacancies arose. There is no dispute as well with regard to the fact that he was given promotion on 13.02.1995, which no doubt contemplated on failure to report or join one of the promotions, which stood cancelled and therefore, he could not join. It was cancelled on 24.03.1995 and on his appeals through various representations filed at later stage, as mentioned above, did not yield any result. In support, the learned counsel appearing for the respondent refers to Regulation 5 of the Act, which reads as follows:

> "For purposes of direct recruitment, promotion, transfer, discharge and re-appointment, all posts under each category of this service shall be a unit:
>
> Provided that the incumbents in the existing units, namely, administrative office unit and Colleges/Research Stations unit, shall not be transferred outside their units, as long as they hold their present posts, except with their consent.
>
> Provided further that where the existing incumbents, when transferred on promotion, outside their unit, decline promotion, they shall be considered for promotion when subsequent vacancies arise.

> Provided also that persons appointed under those regulations, either by direct recruitment or by promotion or by transfer, shall be liable for transfer from the Administrative Office to Colleges/Research Stations and vice versa."

On a bare reading of the aforesaid provision, it is amply made clear that the proviso attached thereto is that in a given situation of the like nature, they have to consider for promotion when subsequent vacancies arise. There is no proper explanation forthcoming on behalf of the appellants herein as to how and under what circumstances the applicability of the said provisions could be restricted to the post other than the one, which is held by the respondent herein. There is no dispute to the effect that the respondent was promoted, as rightly pointed out by the learned Single Judge, on 13.02.1995. However, due to the exigencies and reasons mentioned in the representations, he could not possibly join and the same was cancelled. His only case is that he should be considered for the next vacancies and even otherwise, later on several of his juniors have been given promotions. There is no serious dispute on behalf of the appellants in regard to the promotions affected to other juniors, as pointed out on behalf of the respondent herein. Normally, in the absence of specific provision under the service regulations governing certain situations, there could have been a mute question as to whether once declined be entitled to reiterate his claim for promotion on the latter occasion whenever a vacancy arises.

Since in this case, no such situation arises. In fact, the very Regulation makes it clear that specifically under the second proviso to Regulation No.5, his case has necessarily to be considered once again in spite of the earlier disinclination to accept the promotion. In view of such categorical and specific provision governing the situation, there cannot be any doubt to hold that the respondent's (writ petitioner)

case needs to be considered once again and no reason was pointed out as to why the respondent could not have been considered for such promotion. Even otherwise, it has been shown that several of his juniors already marched forward, further, as rightly relied on by the learned Single Judge almost in similar circumstances this Court in WA.No.973 of 1996 dated 21.08.1996, for consideration of the employees case for promotion, held as follows:

> "Heard.
>
> It appears writ petitioner – appellant was promoted and transferred to a post to which he did not report and questioned, instead, the promotion and appointment of another person in the service. Eventually, however, while proceedings continued, he superannuated. Be that as it may, it appears to be a fit case, in our opinion, to dispose of the writ petitions and the writ appeal with the observation that the writ petitioner – appellant shall make a representation before the competent authority and the competent authority shall consider the same for treating the writ petitioner – appellant's promotion for the purpose of pension and retirement benefits and accordingly fix the consequential terminal benefits."

From the above, it is quite apparent that this Court had already applied the aforesaid rule under the given circumstances, which is akin to the present situation. The learned Single Judge also referred to a decision in an unreported case in WP.No.20012 of 1996, which also renders similar such relief as granted in the present case.

Having regard to the aforesaid reasons as mentioned above, even on an interpretation of Regulation No.5 of the aforesaid regulations and the directions as given by this Court in a similar situation, we do not find any error or illegality in the order passed by the learned Single Judge, allowing the writ petition and ultimately directing the appellants to consider the case of the respondent in

proper perspective on the representation filed by the respondent/writ petitioner praying for the said promotion for the purpose of pension on retirement and also for fixing the terminal benefits. Hence, we do not find any merit in the above appeal and the same is liable to be dismissed.

Accordingly, the appeal is dismissed. No costs.

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B. PRAKASH RAO, J

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D. APPA RAO, J

Date: 22-8-2006.
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